

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

07C 1926

In re:

KMART CORPORATION, *et al.*,

Debtors.

Case No. 02 B 02474  
(Jointly Administered)

Chapter 11

Hon. Susan Pierson Sonderby

**NOTICE OF APPEAL**

Philip Morris Capital Corporation and HNB Investment Corp. hereby appeal, pursuant to 28 U.S.C. §158(a)(1), to the United States District Court for the Northern District of Illinois from the following, all of which were entered by the United States Bankruptcy Court for the Northern District of Illinois:

- (1) *Order Allowing Claim No. 50863 and Disallowing Claim Nos. 50110, 50111, 50112 and 50113* (Docket No. 30689) (the "Claims Order") (copy attached as Exhibit A);
- (2) *Findings of Fact and Conclusions of Law* (Docket No. 30688) referenced in the Claims Order (copy attached as Exhibit B);
- (3) *Order* (Docket No. 30687), to the extent it denied Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion *in Limine* to Exclude Evidence (copy attached as Exhibit C);
- (4) *Order* (Docket No. 30685) denying Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion for Judgment Pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(c) (copy attached as Exhibit D); and
- (5) *Order* (Docket No. 29352) granting the Reorganized Debtors' Motion *In Limine* to Exclude Evidence Relating to Kmart's Settlement with Verizon (copy attached as Exhibit E).

Each of items (1) through (4) above was entered on the docket of the captioned case on February 14, 2007; item (5) above is an interlocutory order entered in the same contested matter that was resolved

by the final Claims Order; that interlocutory order was entered on the docket of the captioned case on November 23, 2005.

The names of the parties to all of the items appealed from, and the names, addresses, and telephone numbers of their respective counsel, are as follows:

**Appellants:** Philip Morris Capital Corporation  
HNB Investment Corp.

**Counsel for Appellants:** Thomas J. Magill  
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**Appellees:** Kmart Corporation and its debtor-affiliates

**Counsel for Appellees:** Craig Goldblatt  
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DATED: February 26, 2007

PHILIP MORRIS CAPITAL CORPORATION and  
HNB INVESTMENT CORP.

By: /s/ Christopher Combest  
One of its Attorneys

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

0701926

In re:

KMART CORPORATION, *et al.*,

Debtors.

Case No. 02-B-02474  
(Jointly Administered)

Chapter 11

Hon. Susan Pierson Sonderby

**NOTICE OF FILING**

PLEASE TAKE NOTICE that, on February 26, 2007, we filed with the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, via the Court's CM/ECF system, the **Notice of Appeal**, with accompanying Exhibits A through E, of Philip Morris Capital Corporation and HNB Investment Corp.

DATED: February 26, 2007

PHILIP MORRIS CAPITAL CORPORATION and  
HNB INVESTMENT CORP.

By: /s/ Christopher Combest  
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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	Case No. 02 B 02474
	(Jointly Administered)
KMART CORPORATION, <i>et al.</i> ,	Chapter 11
Debtors.	Hon. Susan Pierson Sonderby

**CERTIFICATE OF SERVICE**

I, Christopher Combest, an attorney, hereby certify that I caused copies of the **Notice of Appeal** (with accompanying Exhibits A through E) of Philip Morris Capital Corporation and HNB Investment Corp. (Docket No. 30701) and the **Notice of Filing** thereof (Docket No. 30702), to be served (1) via the Court's CM/ECF system, on February 26, 2007, upon the parties identified as receiving electronic notice on the attached Notices of Electronic Filing and (2) via first-class U.S. mail, postage prepaid, on February 26, 2007, upon (a) William J. Barrett, Esq., Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP, 333 West Wacker Drive, Suite 2700, Chicago, IL 60606, and (b) Craig Goldblatt, Esq., Wilmer Cutler Pickering Hale & Dorr LLP, 1875 Pennsylvania Avenue, NW, Washington, D.C. 20006.

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

07C1926

In re: ) Case No. 02-02474  
KMART CORPORATION, et al., ) (Jointly Administered)  
Reorganized Debtors. ) Chapter 11  
 ) Hon. Susan Pierson Sonderby  
 )  
 )

NOTICE OF CROSS-APPEAL

Pursuant to 28 U.S.C. § 158(a) and Fed. R. Bankr. P. 8001, Kmart Corporation and certain of its affiliates, former debtors and debtors-in-possession in the above-captioned case, hereby appeal this Court's Orders of February 13, 2007 (Dk. Nos. 30688 and 30689, respectively), allowing Claim Number 50863 in the amount of \$4,737,624. This cross-appeal is in response to the Notice of Appeal filed by Philip Morris Capital Corporation and HNB Investment Corporation on February 26, 2007 (Dk. No. 30701).

The names of all parties to the Order appealed from, and the names, addresses, and telephone numbers of their respective attorneys, are as follows:

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Dated: March 1, 2007

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: ) Chapter 11  
 )  
KMART CORPORATION, *et al.*, ) Case No. 02 B 02474  
 ) (Jointly Administered)  
Reorganized Debtors. ) Honorable Susan Pierson Sonderby

07 C 1926

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on Thursday, March 1, 2007, we filed with the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, via the Court's CM/ECF system, the **Notice of Cross-Appeal** of Kmart Corporation, a copy of which is herewith served upon you.

Dated: March 1, 2007 at Chicago, Illinois.

KMART CORPORATION

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**CERTIFICATE OF SERVICE**

I, William J. Barrett, of the law firm of Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP, certify that I have this 1<sup>st</sup> day of March, 2007, caused to be served on the parties on the Service List below, via email transmission and first class U.S. Mail delivery, postage prepaid, a copy of the foregoing **Notice of Filing** and **Notice of Cross-Appeal**. Further, the parties indicated below on the Electronic Mail Notice List were served with the **Notice of Filing** and **Notice of Cross-Appeal** through the Court's CM/ECF system on March 1, 2007.

/s/ William J. Barrett

William J. Barrett

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**United States Bankruptcy Court**

NORTHERN DISTRICT OF ILLINOIS  
219 S Dearborn Street  
Chicago, IL 60604

**Kenneth S. Gardner, Bankruptcy Clerk**

Date 04/09/2007

Michael Dobbins, Clerk  
United States District Court  
Northern District of Illinois  
219 S Dearborn Street  
Chicago, IL 60604

Case Number

02 B 02474

**FILED**

APR 09 2007

*NH*

Case Name

Kmart Corporation

Notice of Appeal Filed

02/26/2007 Entry #30701

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT** Appellant

Philip Morris Capital Corp and HNB Investment Corp

Dear Sir:

Pursuant to Bankruptcy Rule 8007 transmitted herewith is the Record on Appeal. The Record on Appeal consists of:

<input checked="" type="checkbox"/>

Transmittal Letter and Civil Cover Sheet  
Designation  
Statement of Issues  
Transcript of Proceeding

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Supplemental to the Record  
Notice of Appeal AND CROSS APPEAL  
Copy of Documents Designated  
Exhibits  
Expedited Notice of Appeal  
Certified Copy of Docket Sheet

Additional Items Included

Copy of Docket will be transmitted per attachment in e-mail

27

Total Volumes Transmitted

22 VOLUMES  
1 EXHIBIT  
4 TRANSCRIPTS  
27 TOTAL

The following items will be transmitted as a supplemental to the Record

**07CV1926  
JUDGE GRADY  
MAGISTRATE JUDGE DENLOW**

Previous D C Judge

Grady/ Magistrate Judge Denlow

Case Number

05 C 04874

By Deputy Clerk

*Dorothy Carroll*  
Dorothy Carroll Team B

*435-5597*

**COPY**

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

07 C 1926

In re:

KMART CORPORATION, *et al.*,

Debtors.

Case No. 02 B 02474  
(Jointly Administered)

Chapter 11

Hon. Susan Pierson Sonderby

**DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL OF  
APPELLANTS PHILIP MORRIS CAPITAL CORPORATION  
AND HNB INVESTMENT CORP.**

Appellants Philip Morris Capital Corporation and HNB Investment Corp., pursuant to Fed. R. Bankr. P. 8006, hereby designate the following items to be included in the record on their appeal in the captioned case<sup>1</sup>, which appeal is noticed at Docket No. 30701:

<u>Item No.</u>	<u>Description</u>
1.	Participation Agreement dated May 4, 1995 between Kmart Corporation, HNB Investment Corp., Philip Morris Capital Corporation, Wilmington Trust Company, Chemical Trust Company of California, William J. Wade, Real Estate Finance Trust 1995-K-3, 1995-K-4, 1995-K-5, 1995-K-6, 1995-K-7, 1995-K-8, 1995-K-9, 1995-K-10, 1995-K-12, 1995-K-14, 1995-K-15, 1995-K-16, 1995-K-17, 1995-K-18, 1995-K-19 and 1995-K-20, The Bank of New York and Todd N. Niamey, RemainderMart Limited Partnership, Wilmington Trust Company and the RemainderMart Trust. [Claimants'/Appellants' Trial Exhibit 1]
2.	Tax Indemnification Agreement dated as of May 4, 1995 between Kmart Corporation and Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 2]
3.	Tax Indemnification Agreement dated as of May 4, 1995 between Kmart Corporation and HNB Investment Corp. [Claimants'/Appellants' Trial Exhibit 3]

<sup>1</sup> Appellants have submitted copies of the designated items to the Clerk of the Court; however, because those items have previously been provided to Appellees and/or are readily available to Appellees, they have not been served upon Appellees.

4. Agreement for Sale of Real Estate, dated May 4, 1995, including closing and related documentation attending the same. [Claimants'/Appellants' Trial Exhibit 4]
5. Lease between Kmart Corporation and Real Estate Finance Trust 1995-K-4, dated May 4, 1995 (Kmart Store No. 7700, Location: Hilliard, Ohio). [Claimants'/Appellants' Trial Exhibit 5]
6. Lease Between Kmart Corporation and Real Estate Finance Trust 1995-K-5, dated May 4, 1995, (Kmart Store No. 4923, Location: Amsterdam, NY). [Claimants'/Appellants' Trial Exhibit 6]
7. Lease Between Kmart Corporation and Chemical Trust Company of California, not in its individual capacity, but solely as Co-Trustee of Real Estate Finance Trust 1995-K-6, dated May 4, 1995 (Kmart Store No. 7564, Location: Mission Viejo, California). [Claimants'/Appellants' Trial Exhibit 7]
8. Lease between Kmart Corporation and Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee of Real Estate Finance Trust 1995-K-8, dated May 4, 1995 (Kmart Store No. 4948, Location: Waco, Texas). [Claimants'/Appellants' Trial Exhibit 8]
9. Lease between Kmart Corporation and Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee of Real Estate Finance Trust 1995-K-10, dated May 4, 1995 (Kmart Store No. 49031, Location: Sherman, Texas). [Claimants'/Appellants' Trial Exhibit 9]
10. Lease Between Kmart Corporation and Chemical Trust Company of California, not in its individual capacity, but solely as Co-Trustee of Real Estate Finance Trust 1995-K-16, dated May 4, 1995 (Kmart Store No. 3974, Location: Fresno, California). [Claimants'/Appellants' Trial Exhibit 10]
11. Lease Between Kmart Corporation and William J. Wade, Owner Trustee of Real Estate Finance Trust 1995-K-17, dated May 4, 1995 (Kmart Store No. 4759, Location: Lafayette, Georgia). [Claimants'/Appellants' Trial Exhibit 11]
12. Lease between Kmart Corporation and Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee of Real Estate Finance Trust 1995-K-18, dated May 4, 1995 (Kmart Store No. 4941, Location: San Antonio, Texas). [Claimants'/Appellants' Trial Exhibit 12]
13. Lease Between Kmart Corporation and Real Estate Finance Trust 1995-K-19, dated May 4, 1995 (Kmart Store No. 7704, Location: Mankato, Minnesota). [Claimants'/Appellants' Trial Exhibit 13]

14. Lease between Kmart Corporation and Chemical Trust Company of California, not in its individual capacity, but solely as Co-Trustee of Real Estate Finance Trust 1995-K-20, dated May 4, 1995 (Kmart Store No. 7609, Location: Highland, California). [Claimants'/Appellants' Trial Exhibit 14]
15. Kmart Corporation's Nineteenth Omnibus Objection to Claims (Certain Claims). [Docket No. 20650] [Claimants'/Appellants' Trial Exhibit 15]
16. Kmart Corporation's Twentieth Omnibus Objection to Claims Under 11 U.S.C. §§ 102, 105(a) and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 20651] [Claimants'/Appellants' Trial Exhibit 16]
17. Omnibus Response of Certain Owner Trusts, Wilmington Trust Company, Not In its Individual Capacity But as Owner Trustee, and Philip Morris Capital Corporation and HNB Bank as Owner Participants to Kmart's Nineteenth Omnibus Objection to Claims (Certain Claims) and Twentieth Omnibus Objection to Claims Under 11 U.S.C. §§ 102, 105(a) and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 22211] [Claimants'/Appellants' Trial Exhibit 17]
18. Reorganized Debtors' Amended Objection to Certain Proofs of Claim Filed by Philip Morris Capital Corporation and HNB Investment Corp. [Docket No. 29169] [Claimants'/Appellants' Trial Exhibit 18]
19. First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession. [Taken from Docket No. 10871 (Confirmation Order with attached Plan)] [Claimants'/Appellants' Trial Exhibit 19]
20. Disclosure Statement With Respect to First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession. [Taken from Docket No. 8918 (Order approving Disclosure Statement)] [Claimants'/Appellants' Trial Exhibit 20]
21. Notice of Rejection of Unexpired Nonresidential Real Property Leases (effective January 25, 2002). [Not entered on Docket] [Claimants'/Appellants' Trial Exhibit 21]
22. Notice of Rejection of Unexpired Nonresidential Real Property Leases (dated June 19, 2002; effective June 25, 2002). [Docket No. 4299] [Claimants'/Appellants' Trial Exhibit 22]
23. Notice of Rejection of Unexpired Nonresidential Real Property Leases (dated April 17, 2003; effective April 30, 2003). [Docket No. 10736] [Claimants'/Appellants' Trial Exhibit 23]

24. Claim No. 50110, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and HNB Investment Corp., as Owner Participant, with respect to Real Estate Finance Trust K-18. [Claimants'/Appellants' Trial Exhibit 24]
25. Claim No. 50111, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and HNB Investment Corp., as Owner Participant, with respect to Real Estate Finance Trust K-10. [Claimants'/Appellants' Trial Exhibit 25]
26. Claim No. 50112, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and PMCC, as Owner Participant, with respect to Real Estate Finance Trust K-4. [Claimants'/Appellants' Trial Exhibit 26]
27. Claim No. 50113, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and HNB Investment Corp., as Owner Participant, with respect to Real Estate Finance Trust K-8. [Claimants'/Appellants' Trial Exhibit 27]
28. Claim No. 42208, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-17. [Claimants'/Appellants' Trial Exhibit 28]
29. Claim No. 42209, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-5. [Claimants'/Appellants' Trial Exhibit 29]
30. Claim No. 42289, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-20. [Claimants'/Appellants' Trial Exhibit 30]
31. Claim No. 42290, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-6. [Claimants'/Appellants' Trial Exhibit 31]
32. Claim No. 42291, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-16. [Claimants'/Appellants' Trial Exhibit 32]

33. Claim No. 42292, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-17. [Claimants'/Appellants' Trial Exhibit 33]
34. Claim No. 50863, filed by PMCC in the Kmart Corporation bankruptcy proceedings on May 30, 2003. [Claimants'/Appellants' Trial Exhibit 34]
35. Trust Agreement of Real Estate Finance Trust 1995-K-4, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant and Wilmington Trust Company and William J. Wade, Owner Trustees. [Claimants'/Appellants' Trial Exhibit 35]
36. Trust Agreement of Real Estate Finance Trust 1995-K-5, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 36]
37. Trust Agreement of Real Estate Finance Trust 1995-K-6, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 37]
38. Trust Agreement Supplement of Real Estate Finance Trust 1995-K-6, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, Wilmington Trust Company, Owner Trustee, and Chemical Trust Company of California, Co-Trustee. [Claimants'/Appellants' Trial Exhibit 38]
39. Trust Agreement of Real Estate Finance Trust 1995-K-8, Dated as of April 4, 1995 between HNB Investment Corp., Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 39]
40. Trust Agreement of Real Estate Finance Trust 1995-K-10, Dated as of April 4, 1995 between HNB Investment Corp., Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 40]
41. Trust Agreement of Real Estate Finance Trust 1995-K-16, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 41]
42. Trust Agreement of Real Estate Finance Trust 1995-K-17, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company and William J. Wade, Owner Trustees. [Claimants'/Appellants' Trial Exhibit 42]

43. Trust Agreement of Real Estate Finance Trust 1995-K-18, Dated as of April 4, 1995 between HNB Investment Corp., Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 43]
44. Trust Agreement of Real Estate Finance Trust 1995-K-19, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 44]
45. Trust Agreement of Real Estate Finance Trust 1995-K-20, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 45]
46. Initial Disclosures of Claimants Philip Morris Capital Corporation and HNB Investment Corp. Pursuant to Federal Rule of Bankruptcy Procedure 7026, Including Federal Rule of Civil Procedure 26(a)(1). [Claimants'/Appellants' Trial Exhibit 46]
47. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-4, and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 48]
48. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-5 and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 49]
49. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-6, Chemical Trust Company of California, Co-Trustee, and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 50]
50. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-8, Wilmington Trust Company, the Bank of New York, and William Wineman, Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 51]
51. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-10, Wilmington Trust Company, the Bank of New York and William Wineman, Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 52]
52. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-16, Chemical Trust Company of California, Co-Trustee, the Bank of New York and First American Title Insurance Co. as Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 53]

53. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-17, William J. Wade, Owner Trustee, and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 54]
54. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-18, Wilmington Trust Company, the Bank of New York and William Wineman, Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 55]
55. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-19 and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 56]
56. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-20, Chemical Trust Company of California, Co-Trustee, the Bank of New York and First American Title Insurance Co. as Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 57]
57. Order with Respect to the Bank of New York, as Trustee Claims Subject to Expedited Treatment Pursuant to the Stipulation Resolving Certain Lessor Objections to Confirmation and Establishing Agreed Claim Resolution Procedures Dated April 22, 2003 and Motion to Determine and Allow Claims Under 11 U.S.C. §§ 102(1), 105(a), and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 18141] [Claimants'/Appellants' Trial Exhibit 58]
58. Amended Order with Respect to the Bank of New York, as Trustee Claims Subject to Expedited Treatment Pursuant to the Stipulation Resolving Certain Lessor Objections to Confirmation and Establishing Agreed Claim Resolution Procedures Dated April 22, 2003 and Motion to Determine and Allow Claims Under 11 U.S.C. §§ 102(1), 105(a), and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 18718] [Claimants'/Appellants' Trial Exhibit 59]
59. Claim Number 41099 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.<sup>2</sup>
60. Claim Number 41100 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
61. Claim Number 41101 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.

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<sup>2</sup> Record Items 59 through 92 were submitted as Appellants' Trial Exhibits 60-93, but were denied admission pursuant to the Court's Order entered at Docket No. 29352, which Order is referenced in Appellants' Notice of Appeal.

62. Claim Number 41102 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
63. Claim Number 41103 filed by Verizon Capital Corp. and its subsidiary NCC Neptune Company.
64. Claim Number 41104 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
65. Claim Number 41105 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
66. Claim Number 41106 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
67. Claim Number 43286 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
68. Claim Number 43287 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
69. Claim Number 43288 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
70. Claim Number 43289 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
71. Claim Number 43290 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
72. Claim Number 43291 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
73. Claim Number 43292 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
74. Claim Number 43293 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
75. Claim Number 48882 filed by U.S. Bank, N.A.
76. Claim Number 50100 filed by Verizon Capital Corp. and its subsidiary NCC Neptune Company.
77. Claim Number 50101 filed by Verizon Capital Corp. and its subsidiary NCC Neptune Company.
78. Claim Number 50102 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.

79. Claim Number 50103 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
80. Claim Number 54697 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
81. Claim Number 54698 filed by Verizon Capital Corp. and its subsidiary NCC Horizon Company.
82. Claim Number 54699 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
83. Claim Number 54700 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
84. Claim Number 54701 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
85. Claim Number 54702 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
86. Claim Number 54703 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
87. Claim Number 54704 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
88. Claim Number 56317 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
89. Claim Number 56318 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
90. All Tax Indemnification Agreements between Kmart Corporation and Verizon Capital Corporation and/or any of its subsidiaries, including NCC Key Company, NCC Fox Company and NCC Neptune Company.
91. All Participation Agreements between Kmart Corporation and Verizon Capital Corporation and/or any of its subsidiaries, including NCC Key Company, NCC Fox Company and NCC Neptune Company.
92. Consent Order Resolving Certain Administrative, Lease Rejection and Tax Indemnification Claims for Kmart Store Numbers 3584, 4843, 4890, 4891, 4930, 4943, 4947, 4949, 4950, 4954, 4958, 7668 and 7697. [Docket No. 27042]

93. Deed in Lieu of Foreclosure Agreement dated March 15, 2004 between Real Estate Finance Trust 1995-K-4, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-4 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-4 Mortgagee; the Limited Warranty Deed dated March 15, 2004 by the Owner Trust to Property Acquisition Trust 1995-K-4, as nominee of the K-4 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 94]

94. Deed in Lieu of Foreclosure Agreement dated July 15, 2003 between Real Estate Finance Trust 1995-K-5, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-5 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-5 Mortgagee; the Bargain and Sale Deed With Covenant Against Grantor's Acts dated July 21, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-5, as nominee of the K-5 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 95]

95. Deed in Lieu of Foreclosure Agreement dated May 7, 2003 between Real Estate Finance Trust 1995-K-6, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-6 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-6 Mortgagee; the Grant Deed and Assignment dated May 9, 2003 (as amended by corrective Grant Deed and Assignment dated May 17, 2004) by the Owner Trust to Property Acquisition Trust 1993-K-6, as nominee of the K-6 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 96]

96. Deed in Lieu of Foreclosure Agreement dated as of October 16, 2003 between Real Estate Finance Trust 1995-K-8, a Delaware statutory trust, as Owner Trust (the "K-8 Owner Trust"), HNB Investment Corp., as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-8 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-8 Mortgagee; the Bargain And Sale Deed With Covenant Against Grantor's Acts dated October 16, 2003 by the K-8 Owner Trust to Property Acquisition Trust 1995-K-8, as nominee of the K-8 Mortgagee; and attendant

documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 97]

97. Deed in Lieu of Foreclosure Agreement dated October 21, 2003 between Real Estate Finance Trust 1995-K-10, a Delaware statutory trust, as Owner Trust (the "K-10 Owner Trust"), HNB Investment Corp., as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-10 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-10 Mortgagee; the Bargain And Sale Deed With Covenant Against Grantor's Acts dated October 22, 2003 by the K-10 Owner Trust to Property Acquisition Trust 1995-K-18, as nominee of the K-10 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 98]

98. Deed in Lieu of Foreclosure Agreement dated May 7, 2003 between Real Estate Finance Trust 1995-K-16, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-16 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-16 Mortgagee; the Grant Deed and Assignment dated May 9, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-16, as nominee of the K-16 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 99]

99. Deed in Lieu of Foreclosure Agreement dated July 10, 2003 between Real Estate Finance Trust 1995-K-17, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-17 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-17 Mortgagee; the Limited Warranty Deed and Assignment dated July 16, 2003 by the Owner Trust to Wachovia Bank, National Association, as nominee of the K-17 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 100]

100. Deed in Lieu of Foreclosure Agreement dated October 22, 2003 between Real Estate Finance Trust 1995-K-18, a Delaware statutory trust, as Owner Trust (the "K-18 Owner Trust"), HNB Investment Corp., as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-18 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to

the K-18 Mortgagee; the Bargain And Sale Deed With Covenant Against Grantor's Acts dated October 22, 2003 by the K-18 Owner Trust to Property Acquisition Trust 1995-K-18, as nominee of the K-18 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 101]

101. Deed in Lieu of Foreclosure Agreement dated July 30, 2003 between Real Estate Finance Trust 1995-K-19, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-19 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-19 Mortgagee; the Limited Warranty Deed dated August 4, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-19, as nominee of the K-19 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 102]
102. Deed in Lieu of Foreclosure Agreement dated May 7, 2003 between Real Estate Finance Trust 1995-K-20, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-20 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-20 Mortgagee; the Grant Deed and Assignment dated May 9, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-20, as nominee of the K-20 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 103]
103. Stipulation and Order Concerning Reorganized Debtors' Motion to Temporarily Stay Discovery to Set an Expedited Briefing and Hearing Schedule to Resolve a Threshold Legal Issue Relating to Certain Contested Proofs of Claim (Philip Morris Capital Corporation) and Request for Off-Omnibus Hearing. [Docket No. 28954] [Claimants'/Appellants' Trial Exhibit 104]
104. Kmart Corporation's Response to Philip Morris Capital Corporation's and HNB Investment Corp.'s First Set of Interrogatories, First Requests for Admission and First Requests for Production of Documents. [Claimants'/Appellants' Trial Exhibit 107]
105. Kmart Corporation's Response to Philip Morris Capital Corporation's and HNB Investment [Corp.'s] Second Set of Interrogatories, Second Requests for Admission and Second Requests for Production of Documents [Claimants'/Appellants' Trial Exhibit 108]

106. Redacted Year 2003 Form 1120 Pro Forma Federal Corporate Income Tax Return of HNB Investment Corp. [Claimants'/Appellants' Trial Exhibit 109]
107. Redacted Year 2003 Form 1120 Pro Forma Federal Corporate Income Tax Return of Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 110]
108. Redacted Year 2004 Form 1120 Pro Forma Federal Corporate Income Tax Return of Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 111]
109. "Kmart Debt Forgiveness Analysis" Worksheets, including supporting pricing files and related documents. [Claimants'/Appellants' Trial Exhibit 112]
110. Excel worksheet file detailing tax accounting bases in real properties, and the work papers relating thereto. [Claimants'/Appellants' Trial Exhibit 113]
111. Internal Lease-Tracking Schedules maintained with respect to each of the subject Properties. [Claimants'/Appellants' Trial Exhibit 116]
112. Warren & Selbert's ABC Pricing Files for the Structured Finance Transaction between Kmart Corporation, the various Delaware Business Trusts, as Owner Trusts, and Philip Morris Capital Corporation and HNB Investment Corp., as Owner Participants. [Claimants'/Appellants' Trial Exhibit 117]
113. First Subset of Record Item 112/Claimants'/Appellants' Trial Exhibit 117 [Separately admitted as Claimants'/Appellants' Trial Exhibit 117-D]
114. First Subset of Record Item 112/Claimants'/Appellants' Trial Exhibit 117 [Separately admitted as Claimants'/Appellants' Trial Exhibit 117-E].
115. Class 5 Confirmation Ballot issued to Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 118]
116. April 28, 2005 letter from Thomas J. Magill to Andrew Goldman. [Claimants'/Appellants' Trial Exhibit 119]
117. Interoffice Memorandum of William Szumanski dated October 15, 2004. [Claimants'/Appellants' Trial Exhibit 120]
118. Invoice documentation (in redacted form) regarding legal fees incurred by the Owner Participants. [Claimants'/Appellants' Trial Exhibit 124]
119. Invoice documentation regarding inspection fees incurred by the Owner Participants in connection with the Properties. [Claimants'/Appellants' Trial Exhibit 125]

120. Invoice documentation regarding trustee's fees assessed by Wilmington Trust Company and incurred by the Owner Participants in connection with the Properties. [Claimants'/Appellants' Trial Exhibit 126]
121. Invoice documentation regarding security expenses incurred by the Owner Participants with respect to the Mission Viejo, California, Property. [Claimants'/Appellants' Trial Exhibit 128]
122. Invoice documentation regarding utility and maintenance expenses incurred by the Owner Participants with respect to the Mission Viejo, California, Property. [Claimants'/Appellants' Trial Exhibit 129]
123. Summary of Expenses from Like Kind Exchange ["LKE"] Transaction. [Claimants'/Appellants' Trial Exhibit 130]
124. LKE Depreciation Analysis (full term). [Claimants'/Appellants' Trial Exhibit 131]
125. LKE Depreciation Analysis (2008 Sale). [Claimants'/Appellants' Trial Exhibit 132]
126. Heidelberg Depreciation with 8 LKE Stores (ABC Report). [Claimants'/Appellants' Trial Exhibit 133]
127. Heidelberg Depreciation with 2 LKE Stores (ABC Report) [Claimants'/Appellants' Trial Exhibit 134]
128. Schedule entitled "PMCC-Kmart Analysis/10 DIL Stores/as of October 24, 2005". [Claimants'/Appellants' Trial Exhibit 135]
129. Invoice to Philip Morris Capital Corporation from Davis Polk & Wardwell, dated May 7, 2002. [Claimants'/Appellants' Trial Exhibit 136]
130. Annual Statement of Cash Flow (ABC Report), with handwritten notes. [Claimants'/Appellants' Trial Exhibit 137]
131. Admitted Trial Exhibits 7, 8, 10, 11 and 12 of Kmart Corporation. [Kmart Corporation's remaining trial exhibits either were withdrawn or were duplicative of other items designated herein.]
132. Initial Trial Brief of Claimants Philip Morris Capital Corporation and HNB Investment Corporation in Support of Their Claims Asserted Against Kmart Corporation, *et al.*, with Exhibits A through O thereto. [Docket Nos. 29151 (Brief) and 29152 (Exhibits A-O)]
133. Reorganized Debtors' Trial Brief in Support of Its [sic] Objections to Certain Contested Claims of Philip Morris Capital Corporation and HNB Investment Corporation, with Exhibits A-O thereto. [Docket No. 29149]

134. Reply Trial Brief of Claimants Philip Morris Capital Corporation and HNB Investment Corp. in Support of Their Claims Asserted Against Kmart Corporation, *et al.*, with Exhibit A thereto. [Docket No. 29201]
135. Reorganized Debtors' Reply Trial Brief in Response to Initial Trial Brief of Philip Morris Capital Corporation and HNB Investment Corporation. [Docket No. 29199]
136. Reorganized Debtors' Motion *in Limine* to Exclude Evidence Relating to Kmart's Settlement with Verizon, with Exhibits A and B thereto. [Docket No. 29221]
137. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion *in Limine* to Exclude Evidence. [Docket No. 29224]
138. Joint Pretrial Statement of Claimants Philip Morris Capital Corporation and HNB Investment Corp. and of Debtor Kmart Corporation Regarding Claims Asserted Against Debtor by Claimants, with Exhibit A thereto. [Docket Nos. 29248 (Joint Pretrial Statement) and 29250 (Substituted Exhibit A)]
139. Transcript of Proceedings of November 8, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
140. Transcript of Proceedings of November 9, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
141. Transcript of Proceedings of November 10, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
142. Transcript of Proceedings of November 30, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
143. Transcript of Proceedings of December 1, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
144. Transcript of Proceedings of February 8, 2006, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
145. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion for Judgment Pursuant to Fed. R. Bankr. P. 7052 and Fed R. Civ. P. 52(c). [Docket No. 29522]

146. Reorganized Debtors' Response to Claimants Philip Morris Capital Corp.'s and HNB Investment Corp.'s Motion for Judgment. [Docket No. 29540]
147. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Rule 52(c) Response to Kmart's Motion for Judgment. [Docket No. 29523] **[NOTE:** Kmart's Motion for Judgment was made orally in Court and therefore does not appear on the Docket.]
148. Memorandum in Support of Proposed Findings of Fact and Conclusions of Law Submitted by Claimants Philip Morris Capital Corporation and HNB Investment Corp., with Exhibits A (Proposed Findings of Fact and Conclusions of Law) and B (Revenue Ruling 2004-86) thereto. [Docket No. 29525]
149. Reorganized Debtors' Memorandum in Support of Their Proposed Findings of Fact and Conclusions of Law, with Attachments A (Proposed Findings of Fact), B (Proposed Conclusions of Law) and C (November 18, 2005, transcript of proceedings in *In re UAL Corp.*, Case No. 02 B 48191, United States Bankruptcy Court for the Northern District of Illinois). [Docket No. 29520]
150. Order Allowing Claim No. 50863 and Disallowing Claim Nos. 50110, 50111, 50112 and 50113 (the "Claims Order"). [Docket No. 30689]
151. Findings of Fact and Conclusions of Law referenced in the Claims Order. [Docket No. 30688]
152. Order, to the extent it denied Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion *in Limine* to Exclude Evidence. [Docket No. 30687]
153. Order denying Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion for Judgment Pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(c). [Docket No. 30685]
154. Order granting the Reorganized Debtors' Motion *In Limine* to Exclude Evidence Relating to Kmart's Settlement with Verizon. [Docket No. 29352]

155. Notice of Appeal of Appellants and Claimants Philip Morris Capital Corporation and HNB Investment Corp., with Exhibits A though E (which are duplicates of Record Items 150 through 154, above). [Docket No. 30701]

Dated: March 8, 2007

PHILIP MORRIS CAPITAL CORPORATION and  
HNB INVESTMENT CORP., Appellants

By: /s/ Christopher Combest  
One of its Attorneys

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

07 C 1926

In re:

KMART CORPORATION, *et al.*,

Debtors.

Case No. 02 B 02474  
(Jointly Administered)

Chapter 11

Hon. Susan Pierson Sonderby

**STATEMENT OF ISSUES ON APPEAL OF APPELLANTS  
PHILIP MORRIS CAPITAL CORPORATION AND HNB INVESTMENT CORP.**

Appellants Philip Morris Capital Corporation and HNB Investment Corp., pursuant to Fed. R. Bankr. P. 8006, hereby state the issues to be presented upon their appeal from certain orders entered by the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court") in the captioned jointly-administered bankruptcy cases, which appeal is noticed at Docket No. 30701:

1. Did the Bankruptcy Court err, as a matter of law, by interpreting the relevant Tax Indemnification Agreements ("TIAs") between Appellants and Kmart Corporation to require that Appellants' lump-sum claim under the TIAs (the "TIA Claim") be reduced to an amount that is less than the amount of the income tax liability in fact realized by Appellants as a result of the Debtors' default? Specifically, did the Bankruptcy Court err by reducing the TIA Claim:

(a) by an amount equal to the present value of the future income taxes Appellants would have paid on future income that Appellants will never receive as a result of the Debtors' default;

(b) on account of tax deductions previously realized by Appellants for certain accrued interest on the cancelled mortgage debt that gave rise to the cancellation-of-indebtedness income realized by Appellants; and

(c) for the full amount of certain unamortized transaction expenses, where the same were only accelerated and thus deducted currently in accordance with applicable tax laws?

2. Did the Bankruptcy Court err, as a matter of law, in concluding that under the controlling provisions of the TIAs an offset is not required against identified income tax savings for the loss of funds which were intended to have been available to satisfy those future tax responsibilities?

3. Did the Bankruptcy Court err, as a matter of law, in concluding that under the controlling provisions of the TIAs the Debtors are entitled to a credit against the gross amount of the TIA Claim by virtue of certain accrued but unpaid interest included in Claimants' calculation of the TIA Claim?

4. Did the Bankruptcy Court err in relying upon the expert testimony of the Debtors' witness, Issac Sperka, to credit against the TIA Claims the so-called Tax Savings (as that term is defined in the Bankruptcy Court's Findings of Fact and Conclusions of Law), when Sperka provided the Bankruptcy Court with only ultimate conclusions not based upon any demonstrated analysis, methodology or calculations?

DATED: March 8, 2007

PHILIP MORRIS CAPITAL CORPORATION and  
HNB INVESTMENT CORP., Appellants

By: /s/ Christopher Combest  
One of its Attorneys

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

07 C 1926

In re: ) Case No. 02-02474  
KMART CORPORATION, et al., ) (Jointly Administered)  
Reorganized Debtors. ) ) Chapter 11  
 ) ) Hon. Susan Pierson Sonderby  
 ) )

**KMART CORPORATION'S STATEMENT OF ISSUES  
AND DESIGNATION OF RECORD ON CROSS-APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, cross-appellant Kmart Corporation ("Kmart") hereby submits its Statement of the Issues and Designation of Record in connection with its cross-appeal of two Orders, both dated February 13, 2007 (Dk. Nos. 30688 and 30689).<sup>1</sup>

**STATEMENT OF THE ISSUES**

1. Did the Bankruptcy Court err in holding that its Order resolving certain claims brought against Kmart by the Bank of New York (Dk. No. 18718) precluded Kmart from asserting that the claims filed by Philip Morris Capital Corporation and HNB Investment Corp. (claim nos. 50110, 50111, 50112, 50113, and 50863 (the "Claims")) were subject to the cap on damages set forth in 11 U.S.C. § 502(b)(6), in light of the fact that the issues resolved by that Order were not actually litigated, and that the terms of that Order state it is without prejudice to the Claims.

2. Did the Bankruptcy Court err in stating, on the merits, that the cap on damages set forth in 11 U.S.C. § 502(b)(6) does not apply to the Claims.

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<sup>1</sup> This cross-appeal was commenced by Kmart's Notice of Cross-Appeal filed on March 1, 2007 (Dk. No 30707).

### **DESIGNATION OF RECORD**

The following Designation of Record constitutes Kmart's affirmative designations for its cross-appeal, and its counter-designations in response to the Designation of Record filed by the Appellant, Philip Morris Capital Corporation and HNB Investment Corp., on March 12, 2007 ("Appellant's Designations," Dk. No. 30746). Appellant's Designations are incorporated herein by reference (see Item 1, below).

**Item No.**      **Description**

1. Designation of Items to be Included in Record on Appeal of Appellants Phillip Morris Capital Corporation and HNB Investment Corp. [Docket No. 30746].
2. Order Under 11 U.S.C. §§ 105(a) and 365 (a) Authorizing (A) Rejection of Certain Unexpired Leases and (B) Approving Procedures for Rejecting Other Unexpired Leases [Docket No. 139].
3. Objection of the Bank of New York, in Trustee Capacities to Confirmation of Debtors' first Amended Joint Plan of Reorganization and Assumption of Certain Leases [Docket No. 10035]
4. Findings of Fact, Conclusions of Law, and Order Under 11 U.S.C. §§ 1129 (a) and (b) Confirming the First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession, As Modified (excluding exhibit attachments; the First Amended Joint Plan is included in Appellants' Designations, at Item 19) [Docket No. 10871].
5. Stipulation Resolving Objection by Bank of New York in Trustee Capacities [Docket No. 11104].
6. Stipulation Resolving Certain Lessor Objections to Confirmation and Establishing Agreed Claim Resolution Procedures [Docket No. 11107].
7. Debtors' Omnibus Objection to Rejection Damages Claims Subject to Expedited Treatment Pursuant to the Stipulation Resolving Certain Lessor Objections to Confirmation and Establishing Agreed Claim Resolution Procedures dated April 22, 2003 and Motion to Determine and Allow Claims Under 11 U.S.C. §§ 102(1), 105(a), and 502(b), and Fed. R. Bankr. P. 3007 [Docket No. 12614].
8. Order With Respect to Claims Subject to Expedited Treatment Pursuant to the Stipulation Resolving Certain Lessor Objections to Confirmation and Establishing Agreed Claim Resolution Procedures dated April 22, 2003 and Motion to

Determine and Allow Claims Under 11 U.S.C. §§ 102(1), 105 (A), and 502 (B), and Fed. R. Bankr. P. 3007 [Docket No. 12855].

9. Reorganized Debtor's Motion to Temporarily Stay Discovery to Set an Expedited Briefing and Hearing Schedule to Resolve a Threshold Legal Issue Related to Certain Contested Proofs of Claim (Philip Morris Capital Corporation) and Request for Off-Omnibus Hearing [Docket No. 28886].
10. Objection of Claimants Phillip Morris Capital Corporation and HNB Investment Corp. to Reorganized Debtor's Motion to Temporarily Stay Discovery to Set an Expedited Briefing and Hearing Schedule to Resolve a Threshold Legal Issue Related to Certain Contested Proofs of Claim (Philip Morris Capital Corporation) and Request for Off-Omnibus Hearing [Docket No. 28893].
11. Kmart's Status Conference Report RE: Objections to PMCC Claims [Docket No. 28971].
12. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Response to Kmart's Status Conference Report RE: Objections to PMCC Claims [Docket No. 28973].
13. Reorganized Debtor's Motion to Amend Objections to Contested Proofs of Claim Filed by Philip Morris Capital Corporation and HNB Investment Corporation [Docket No. 29004].
14. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Objection to Reorganized Debtor's Motion to Amend Objections to Contested Proofs of Claim Filed by Philip Morris Capital Corporation and HNB Investment Corporation [Docket No. 29030].
15. Reorganized Debtor's Reply Brief in Support of Motion to Amend Objections to Certain Contested Proofs of Claim Filed by Philip Morris Capital Corporation and HNB Investment Corporation [Docket No. 29047].
16. Order Granting Reorganized Debtor's Motion to Amend Objections to Certain Contested Proofs of Claim Filed by Philip Morris Capital Corporation and HNB Investment Corp. [Docket No. 29124].
17. Reorganized Debtor's List of Witnesses and Exhibits for the Trial of the Contested Claims of Philip Morris Capital Corporation and HNB Investment Corporation [Docket No. 29210].
18. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s List of Designated Trial Witnesses [Docket No. 29212].
19. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s List of Designated Trial Exhibits [Docket No. 29214].

20. Reorganized Debtor's Motion *in Limine* to Exclude, as Inadmissible, Parol Evidence Regarding the Transaction Kmart Entered into with Claimants [Docket No. 29222].
21. Reorganized Debtor's Motion *in Limine* to Preclude the Introduction of Any Document Responsive to Kmart's Document Requests That Claimants Did Not Produce in Discovery [Docket No. 29223].
22. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Amended List of Designated Trial Exhibits [Docket No. 29246].
23. Reorganized Debtor's Reply to Claimants' Motion *in Limine* to Exclude Evidence [Docket No. 29267].
24. Reorganized Debtor's Supplemental Objection to Claimants' Amended List of Designated Trial Exhibits [Docket No. 29269].
25. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Response and Objection to Reorganized Debtor's Motions *in Limine* [Docket No. 29274].
26. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Response in Support of Their Motion *in Limine* to Exclude Evidence [Docket No. 29281].
27. Notice of Cross-Appeal [Docket No. 30707].
28. Transcript of Proceedings of August 23, 2005, in the United States Bankruptcy court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
29. Transcript of Proceedings of September 20, 2005, in the United States Bankruptcy court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.

Dated: March 19, 2007

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

07 C 1926

In re:

KMART CORPORATION, *et al.*,

Debtors.

Case No. 02 B 02474  
(Jointly Administered)

Chapter 11

Hon. Susan Pierson Sonderby

**DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL OF  
APPELLANTS PHILIP MORRIS CAPITAL CORPORATION  
AND HNB INVESTMENT CORP.**

Appellants Philip Morris Capital Corporation and HNB Investment Corp., pursuant to Fed. R. Bankr. P. 8006, hereby designate the following items to be included in the record on their appeal in the captioned case<sup>1</sup>, which appeal is noticed at Docket No. 30701:

<u>Item No.</u>	<u>Description</u>
1.	Participation Agreement dated May 4, 1995 between Kmart Corporation, HNB Investment Corp., Philip Morris Capital Corporation, Wilmington Trust Company, Chemical Trust Company of California, William J. Wade, Real Estate Finance Trust 1995-K-3, 1995-K-4, 1995-K-5, 1995-K-6, 1995-K-7, 1995-K-8, 1995-K-9, 1995-K-10, 1995-K-12, 1995-K-14, 1995-K-15, 1995-K-16, 1995-K-17, 1995-K-18, 1995-K-19 and 1995-K-20, The Bank of New York and Todd N. Niamey, RemainderMart Limited Partnership, Wilmington Trust Company and the RemainderMart Trust. [Claimants'/Appellants' Trial Exhibit 1]
2.	Tax Indemnification Agreement dated as of May 4, 1995 between Kmart Corporation and Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 2]
3.	Tax Indemnification Agreement dated as of May 4, 1995 between Kmart Corporation and HNB Investment Corp. [Claimants'/Appellants' Trial Exhibit 3]

<sup>1</sup> Appellants have submitted copies of the designated items to the Clerk of the Court; however, because those items have previously been provided to Appellees and/or are readily available to Appellees, they have not been served upon Appellees.

4. Agreement for Sale of Real Estate, dated May 4, 1995, including closing and related documentation attending the same. [Claimants'/Appellants' Trial Exhibit 4]
5. Lease between Kmart Corporation and Real Estate Finance Trust 1995-K-4, dated May 4, 1995 (Kmart Store No. 7700, Location: Hilliard, Ohio). [Claimants'/Appellants' Trial Exhibit 5]
6. Lease Between Kmart Corporation and Real Estate Finance Trust 1995-K-5, dated May 4, 1995, (Kmart Store No. 4923, Location: Amsterdam, NY). [Claimants'/Appellants' Trial Exhibit 6]
7. Lease Between Kmart Corporation and Chemical Trust Company of California, not in its individual capacity, but solely as Co-Trustee of Real Estate Finance Trust 1995-K-6, dated May 4, 1995 (Kmart Store No. 7564, Location: Mission Viejo, California). [Claimants'/Appellants' Trial Exhibit 7]
8. Lease between Kmart Corporation and Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee of Real Estate Finance Trust 1995-K-8, dated May 4, 1995 (Kmart Store No. 4948, Location: Waco, Texas). [Claimants'/Appellants' Trial Exhibit 8]
9. Lease between Kmart Corporation and Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee of Real Estate Finance Trust 1995-K-10, dated May 4, 1995 (Kmart Store No. 49031, Location: Sherman, Texas). [Claimants'/Appellants' Trial Exhibit 9]
10. Lease Between Kmart Corporation and Chemical Trust Company of California, not in its individual capacity, but solely as Co-Trustee of Real Estate Finance Trust 1995-K-16, dated May 4, 1995 (Kmart Store No. 3974, Location: Fresno, California). [Claimants'/Appellants' Trial Exhibit 10]
11. Lease Between Kmart Corporation and William J. Wade, Owner Trustee of Real Estate Finance Trust 1995-K-17, dated May 4, 1995 (Kmart Store No. 4759, Location: Lafayette, Georgia). [Claimants'/Appellants' Trial Exhibit 11]
12. Lease between Kmart Corporation and Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee of Real Estate Finance Trust 1995-K-18, dated May 4, 1995 (Kmart Store No. 4941, Location: San Antonio, Texas). [Claimants'/Appellants' Trial Exhibit 12]
13. Lease Between Kmart Corporation and Real Estate Finance Trust 1995-K-19, dated May 4, 1995 (Kmart Store No. 7704, Location: Mankato, Minnesota). [Claimants'/Appellants' Trial Exhibit 13]

14. Lease between Kmart Corporation and Chemical Trust Company of California, not in its individual capacity, but solely as Co-Trustee of Real Estate Finance Trust 1995-K-20, dated May 4, 1995 (Kmart Store No. 7609, Location: Highland, California). [Claimants'/Appellants' Trial Exhibit 14]
15. Kmart Corporation's Nineteenth Omnibus Objection to Claims (Certain Claims). [Docket No. 20650] [Claimants'/Appellants' Trial Exhibit 15]
16. Kmart Corporation's Twentieth Omnibus Objection to Claims Under 11 U.S.C. §§ 102, 105(a) and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 20651] [Claimants'/Appellants' Trial Exhibit 16]
17. Omnibus Response of Certain Owner Trusts, Wilmington Trust Company, Not In its Individual Capacity But as Owner Trustee, and Philip Morris Capital Corporation and HNB Bank as Owner Participants to Kmart's Nineteenth Omnibus Objection to Claims (Certain Claims) and Twentieth Omnibus Objection to Claims Under 11 U.S.C. §§ 102, 105(a) and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 22211] [Claimants'/Appellants' Trial Exhibit 17]
18. Reorganized Debtors' Amended Objection to Certain Proofs of Claim Filed by Philip Morris Capital Corporation and HNB Investment Corp. [Docket No. 29169] [Claimants'/Appellants' Trial Exhibit 18]
19. First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession. [Taken from Docket No. 10871 (Confirmation Order with attached Plan)] [Claimants'/Appellants' Trial Exhibit 19]
20. Disclosure Statement With Respect to First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession. [Taken from Docket No. 8918 (Order approving Disclosure Statement)] [Claimants'/Appellants' Trial Exhibit 20]
21. Notice of Rejection of Unexpired Nonresidential Real Property Leases (effective January 25, 2002). [Not entered on Docket] [Claimants'/Appellants' Trial Exhibit 21]
22. Notice of Rejection of Unexpired Nonresidential Real Property Leases (dated June 19, 2002; effective June 25, 2002). [Docket No. 4299] [Claimants'/Appellants' Trial Exhibit 22]
23. Notice of Rejection of Unexpired Nonresidential Real Property Leases (dated April 17, 2003; effective April 30, 2003). [Docket No. 10736] [Claimants'/Appellants' Trial Exhibit 23]

24. Claim No. 50110, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and HNB Investment Corp., as Owner Participant, with respect to Real Estate Finance Trust K-18. [Claimants'/Appellants' Trial Exhibit 24]
25. Claim No. 50111, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and HNB Investment Corp., as Owner Participant, with respect to Real Estate Finance Trust K-10. [Claimants'/Appellants' Trial Exhibit 25]
26. Claim No. 50112, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and PMCC, as Owner Participant, with respect to Real Estate Finance Trust K-4. [Claimants'/Appellants' Trial Exhibit 26]
27. Claim No. 50113, filed in the Kmart Corporation bankruptcy proceedings on May 30, 2003 by Wilmington Trust Company, not individually but as Owner Trustee, and HNB Investment Corp., as Owner Participant, with respect to Real Estate Finance Trust K-8. [Claimants'/Appellants' Trial Exhibit 27]
28. Claim No. 42208, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-17. [Claimants'/Appellants' Trial Exhibit 28]
29. Claim No. 42209, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-5. [Claimants'/Appellants' Trial Exhibit 29]
30. Claim No. 42289, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-20. [Claimants'/Appellants' Trial Exhibit 30]
31. Claim No. 42290, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-6. [Claimants'/Appellants' Trial Exhibit 31]
32. Claim No. 42291, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-16. [Claimants'/Appellants' Trial Exhibit 32]

33. Claim No. 42292, filed in the Kmart Corporation bankruptcy proceedings on July 31, 2002 by Wilmington Trust Company, not individually but as Owner Trustee (on behalf of PMCC), with respect to Real Estate Finance Trust K-17. [Claimants'/Appellants' Trial Exhibit 33]
34. Claim No. 50863, filed by PMCC in the Kmart Corporation bankruptcy proceedings on May 30, 2003. [Claimants'/Appellants' Trial Exhibit 34]
35. Trust Agreement of Real Estate Finance Trust 1995-K-4, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant and Wilmington Trust Company and William J. Wade, Owner Trustees. [Claimants'/Appellants' Trial Exhibit 35]
36. Trust Agreement of Real Estate Finance Trust 1995-K-5, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 36]
37. Trust Agreement of Real Estate Finance Trust 1995-K-6, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 37]
38. Trust Agreement Supplement of Real Estate Finance Trust 1995-K-6, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, Wilmington Trust Company, Owner Trustee, and Chemical Trust Company of California, Co-Trustee. [Claimants'/Appellants' Trial Exhibit 38]
39. Trust Agreement of Real Estate Finance Trust 1995-K-8, Dated as of April 4, 1995 between HNB Investment Corp., Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 39]
40. Trust Agreement of Real Estate Finance Trust 1995-K-10, Dated as of April 4, 1995 between HNB Investment Corp., Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 40]
41. Trust Agreement of Real Estate Finance Trust 1995-K-16, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 41]
42. Trust Agreement of Real Estate Finance Trust 1995-K-17, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company and William J. Wade, Owner Trustees. [Claimants'/Appellants' Trial Exhibit 42]

43. Trust Agreement of Real Estate Finance Trust 1995-K-18, Dated as of April 4, 1995 between HNB Investment Corp., Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 43]
44. Trust Agreement of Real Estate Finance Trust 1995-K-19, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 44]
45. Trust Agreement of Real Estate Finance Trust 1995-K-20, Dated as of April 4, 1995 between Philip Morris Capital Corporation, Owner Participant, and Wilmington Trust Company, Owner Trustee. [Claimants'/Appellants' Trial Exhibit 45]
46. Initial Disclosures of Claimants Philip Morris Capital Corporation and HNB Investment Corp. Pursuant to Federal Rule of Bankruptcy Procedure 7026, Including Federal Rule of Civil Procedure 26(a)(1). [Claimants'/Appellants' Trial Exhibit 46]
47. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-4, and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 48]
48. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-5 and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 49]
49. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-6, Chemical Trust Company of California, Co-Trustee, and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 50]
50. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-8, Wilmington Trust Company, the Bank of New York, and William Wineman, Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 51]
51. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-10, Wilmington Trust Company, the Bank of New York and William Wineman, Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 52]
52. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-16, Chemical Trust Company of California, Co-Trustee, the Bank of New York and First American Title Insurance Co. as Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 53]

53. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-17, William J. Wade, Owner Trustee, and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 54]
54. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-18, Wilmington Trust Company, the Bank of New York and William Wineman, Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 55]
55. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-19 and the Bank of New York. [Claimants'/Appellants' Trial Exhibit 56]
56. Indenture, Mortgage and Deed of Trust, Assignment of Rents and Security Agreement, Dated as of May 4, 1995, Among Real Estate Finance Trust 1995 K-20, Chemical Trust Company of California, Co-Trustee, the Bank of New York and First American Title Insurance Co. as Mortgage Trustee. [Claimants'/Appellants' Trial Exhibit 57]
57. Order with Respect to the Bank of New York, as Trustee Claims Subject to Expedited Treatment Pursuant to the Stipulation Resolving Certain Lessor Objections to Confirmation and Establishing Agreed Claim Resolution Procedures Dated April 22, 2003 and Motion to Determine and Allow Claims Under 11 U.S.C. §§ 102(1), 105(a), and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 18141] [Claimants'/Appellants' Trial Exhibit 58]
58. Amended Order with Respect to the Bank of New York, as Trustee Claims Subject to Expedited Treatment Pursuant to the Stipulation Resolving Certain Lessor Objections to Confirmation and Establishing Agreed Claim Resolution Procedures Dated April 22, 2003 and Motion to Determine and Allow Claims Under 11 U.S.C. §§ 102(1), 105(a), and 502(b) and Fed. R. Bankr. P. 3007. [Docket No. 18718] [Claimants'/Appellants' Trial Exhibit 59]
59. Claim Number 41099 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.<sup>2</sup>
60. Claim Number 41100 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
61. Claim Number 41101 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.

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<sup>2</sup> Record Items 59 through 92 were submitted as Appellants' Trial Exhibits 60-93, but were denied admission pursuant to the Court's Order entered at Docket No. 29352, which Order is referenced in Appellants' Notice of Appcal.

62. Claim Number 41102 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
63. Claim Number 41103 filed by Verizon Capital Corp. and its subsidiary NCC Neptune Company.
64. Claim Number 41104 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
65. Claim Number 41105 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
66. Claim Number 41106 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
67. Claim Number 43286 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
68. Claim Number 43287 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
69. Claim Number 43288 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
70. Claim Number 43289 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
71. Claim Number 43290 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
72. Claim Number 43291 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
73. Claim Number 43292 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
74. Claim Number 43293 filed by William J. Wade, not in his individual capacity but as Owner Trustee.
75. Claim Number 48882 filed by U.S. Bank, N.A.
76. Claim Number 50100 filed by Verizon Capital Corp. and its subsidiary NCC Neptune Company.
77. Claim Number 50101 filed by Verizon Capital Corp. and its subsidiary NCC Neptune Company.
78. Claim Number 50102 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.

79. Claim Number 50103 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
80. Claim Number 54697 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
81. Claim Number 54698 filed by Verizon Capital Corp. and its subsidiary NCC Horizon Company.
82. Claim Number 54699 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
83. Claim Number 54700 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
84. Claim Number 54701 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
85. Claim Number 54702 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
86. Claim Number 54703 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
87. Claim Number 54704 filed by Verizon Capital Corp. and its subsidiary NCC Key Company.
88. Claim Number 56317 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
89. Claim Number 56318 filed by Verizon Capital Corp. and its subsidiary NCC Fox Company.
90. All Tax Indemnification Agreements between Kmart Corporation and Verizon Capital Corporation and/or any of its subsidiaries, including NCC Key Company, NCC Fox Company and NCC Neptune Company.
91. All Participation Agreements between Kmart Corporation and Verizon Capital Corporation and/or any of its subsidiaries, including NCC Key Company, NCC Fox Company and NCC Neptune Company.
92. Consent Order Resolving Certain Administrative, Lease Rejection and Tax Indemnification Claims for Kmart Store Numbers 3584, 4843, 4890, 4891, 4930, 4943, 4947, 4949, 4950, 4954, 4958, 7668 and 7697. [Docket No. 27042]

93. Deed in Lieu of Foreclosure Agreement dated March 15, 2004 between Real Estate Finance Trust 1995-K-4, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-4 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-4 Mortgagee; the Limited Warranty Deed dated March 15, 2004 by the Owner Trust to Property Acquisition Trust 1995-K-4, as nominee of the K-4 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 94]
94. Deed in Lieu of Foreclosure Agreement dated July 15, 2003 between Real Estate Finance Trust 1995-K-5, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-5 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-5 Mortgagee; the Bargain and Sale Deed With Covenant Against Grantor's Acts dated July 21, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-5, as nominee of the K-5 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 95]
95. Deed in Lieu of Foreclosure Agreement dated May 7, 2003 between Real Estate Finance Trust 1995-K-6, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-6 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-6 Mortgagee; the Grant Deed and Assignment dated May 9, 2003 (as amended by corrective Grant Deed and Assignment dated May 17, 2004) by the Owner Trust to Property Acquisition Trust 1993-K-6, as nominee of the K-6 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 96]
96. Deed in Lieu of Foreclosure Agreement dated as of October 16, 2003 between Real Estate Finance Trust 1995-K-8, a Delaware statutory trust, as Owner Trust (the "K-8 Owner Trust"), HNB Investment Corp., as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-8 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-8 Mortgagee; the Bargain And Sale Deed With Covenant Against Grantor's Acts dated October 16, 2003 by the K-8 Owner Trust to Property Acquisition Trust 1995-K-8, as nominee of the K-8 Mortgagee; and attendant

documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 97]

97. Deed in Lieu of Foreclosure Agreement dated October 21, 2003 between Real Estate Finance Trust 1995-K-10, a Delaware statutory trust, as Owner Trust (the "K-10 Owner Trust"), HNB Investment Corp., as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-10 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-10 Mortgagee; the Bargain And Sale Deed With Covenant Against Grantor's Acts dated October 22, 2003 by the K-10 Owner Trust to Property Acquisition Trust 1995-K-18, as nominee of the K-10 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 98]

98. Deed in Lieu of Foreclosure Agreement dated May 7, 2003 between Real Estate Finance Trust 1995-K-16, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-16 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-16 Mortgagee; the Grant Deed and Assignment dated May 9, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-16, as nominee of the K-16 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 99]

99. Deed in Lieu of Foreclosure Agreement dated July 10, 2003 between Real Estate Finance Trust 1995-K-17, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-17 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-17 Mortgagee; the Limited Warranty Deed and Assignment dated July 16, 2003 by the Owner Trust to Wachovia Bank, National Association, as nominee of the K-17 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 100]

100. Deed in Lieu of Foreclosure Agreement dated October 22, 2003 between Real Estate Finance Trust 1995-K-18, a Delaware statutory trust, as Owner Trust (the "K-18 Owner Trust"), HNB Investment Corp., as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-18 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to

the K-18 Mortgagee; the Bargain And Sale Deed With Covenant Against Grantor's Acts dated October 22, 2003 by the K-18 Owner Trust to Property Acquisition Trust 1995-K-18, as nominee of the K-18 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 101]

101. Deed in Lieu of Foreclosure Agreement dated July 30, 2003 between Real Estate Finance Trust 1995-K-19, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-19 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-19 Mortgagee; the Limited Warranty Deed dated August 4, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-19, as nominee of the K-19 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 102]
102. Deed in Lieu of Foreclosure Agreement dated May 7, 2003 between Real Estate Finance Trust 1995-K-20, a Delaware statutory trust, as Owner Trust, Philip Morris Capital Corporation, as Owner Participant, and The Bank of New York, not in its individual capacity but solely as Corporate Indenture Trustee (the "K-20 Mortgagee"); the promissory note and other instrument(s) and/or agreement(s) identified in said Deed in Lieu of Foreclosure Agreement and evidencing the underlying indebtedness of the Owner Trust to the K-20 Mortgagee; the Grant Deed and Assignment dated May 9, 2003 by the Owner Trust to Property Acquisition Trust 1995-K-20, as nominee of the K-20 Mortgagee; and attendant documentation relating to the foregoing. [Claimants'/Appellants' Trial Exhibit 103]
103. Stipulation and Order Concerning Reorganized Debtors' Motion to Temporarily Stay Discovery to Set an Expedited Briefing and Hearing Schedule to Resolve a Threshold Legal Issue Relating to Certain Contested Proofs of Claim (Philip Morris Capital Corporation) and Request for Off-Omnibus Hearing. [Docket No. 28954] [Claimants'/Appellants' Trial Exhibit 104]
104. Kmart Corporation's Response to Philip Morris Capital Corporation's and HNB Investment Corp.'s First Set of Interrogatories, First Requests for Admission and First Requests for Production of Documents. [Claimants'/Appellants' Trial Exhibit 107]
105. Kmart Corporation's Response to Philip Morris Capital Corporation's and HNB Investment Corp.'s Second Set of Interrogatories, Second Requests for Admission and Second Requests for Production of Documents [Claimants'/Appellants' Trial Exhibit 108]

106. Redacted Year 2003 Form 1120 Pro Forma Federal Corporate Income Tax Return of HNB Investment Corp. [Claimants'/Appellants' Trial Exhibit 109]
107. Redacted Year 2003 Form 1120 Pro Forma Federal Corporate Income Tax Return of Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 110]
108. Redacted Year 2004 Form 1120 Pro Forma Federal Corporate Income Tax Return of Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 111]
109. "Kmart Debt Forgiveness Analysis" Worksheets, including supporting pricing files and related documents. [Claimants'/Appellants' Trial Exhibit 112]
110. Excel worksheet file detailing tax accounting bases in real properties, and the work papers relating thereto. [Claimants'/Appellants' Trial Exhibit 113]
111. Internal Lease-Tracking Schedules maintained with respect to each of the subject Properties. [Claimants'/Appellants' Trial Exhibit 116]
112. Warren & Selbert's ABC Pricing Files for the Structured Finance Transaction between Kmart Corporation, the various Delaware Business Trusts, as Owner Trusts, and Philip Morris Capital Corporation and HNB Investment Corp., as Owner Participants. [Claimants'/Appellants' Trial Exhibit 117]
113. First Subset of Record Item 112/Claimants'/Appellants' Trial Exhibit 117 [Separately admitted as Claimants'/Appellants' Trial Exhibit 117-D]
114. First Subset of Record Item 112/Claimants'/Appellants' Trial Exhibit 117 [Separately admitted as Claimants'/Appellants' Trial Exhibit 117-E].
115. Class 5 Confirmation Ballot issued to Philip Morris Capital Corporation. [Claimants'/Appellants' Trial Exhibit 118]
116. April 28, 2005 letter from Thomas J. Magill to Andrew Goldman. [Claimants'/Appellants' Trial Exhibit 119]
117. Interoffice Memorandum of William Szumanski dated October 15, 2004. [Claimants'/Appellants' Trial Exhibit 120]
118. Invoice documentation (in redacted form) regarding legal fees incurred by the Owner Participants. [Claimants'/Appellants' Trial Exhibit 124]
119. Invoice documentation regarding inspection fees incurred by the Owner Participants in connection with the Properties. [Claimants'/Appellants' Trial Exhibit 125]

120. Invoice documentation regarding trustee's fees assessed by Wilmington Trust Company and incurred by the Owner Participants in connection with the Properties. [Claimants'/Appellants' Trial Exhibit 126]
121. Invoice documentation regarding security expenses incurred by the Owner Participants with respect to the Mission Viejo, California, Property. [Claimants'/Appellants' Trial Exhibit 128]
122. Invoice documentation regarding utility and maintenance expenses incurred by the Owner Participants with respect to the Mission Viejo, California, Property. [Claimants'/Appellants' Trial Exhibit 129]
123. Summary of Expenses from Like Kind Exchange ["LKE"] Transaction. [Claimants'/Appellants' Trial Exhibit 130]
124. LKE Depreciation Analysis (full term). [Claimants'/Appellants' Trial Exhibit 131]
125. LKE Depreciation Analysis (2008 Sale). [Claimants'/Appellants' Trial Exhibit 132]
126. Heidelberg Depreciation with 8 LKE Stores (ABC Report). [Claimants'/Appellants' Trial Exhibit 133]
127. Heidelberg Depreciation with 2 LKE Stores (ABC Report) [Claimants'/Appellants' Trial Exhibit 134]
128. Schedule entitled "PMCC-Kmart Analysis/10 DIL Stores/as of October 24, 2005". [Claimants'/Appellants' Trial Exhibit 135]
129. Invoice to Philip Morris Capital Corporation from Davis Polk & Wardwell, dated May 7, 2002. [Claimants'/Appellants' Trial Exhibit 136]
130. Annual Statement of Cash Flow (ABC Report), with handwritten notes. [Claimants'/Appellants' Trial Exhibit 137]
131. Admitted Trial Exhibits 7, 8, 10, 11 and 12 of Kmart Corporation. [Kmart Corporation's remaining trial exhibits either were withdrawn or were duplicative of other items designated herein.]
132. Initial Trial Brief of Claimants Philip Morris Capital Corporation and HNB Investment Corporation in Support of Their Claims Asserted Against Kmart Corporation, *et al.*, with Exhibits A through O thereto. [Docket Nos. 29151 (Brief) and 29152 (Exhibits A-O)]
133. Reorganized Debtors' Trial Brief in Support of Its [sic] Objections to Certain Contested Claims of Philip Morris Capital Corporation and HNB Investment Corporation, with Exhibits A-O thereto. [Docket No. 29149]

134. Reply Trial Brief of Claimants Philip Morris Capital Corporation and HNB Investment Corp. in Support of Their Claims Asserted Against Kmart Corporation, *et al.*, with Exhibit A thereto. [Docket No. 29201]
135. Reorganized Debtors' Reply Trial Brief in Response to Initial Trial Brief of Philip Morris Capital Corporation and HNB Investment Corporation. [Docket No. 29199]
136. Reorganized Debtors' Motion *in Limine* to Exclude Evidence Relating to Kmart's Settlement with Verizon, with Exhibits A and B thereto. [Docket No. 29221]
137. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion *in Limine* to Exclude Evidence. [Docket No. 29224]
138. Joint Pretrial Statement of Claimants Philip Morris Capital Corporation and HNB Investment Corp. and of Debtor Kmart Corporation Regarding Claims Asserted Against Debtor by Claimants, with Exhibit A thereto. [Docket Nos. 29248 (Joint Pretrial Statement) and 29250 (Substituted Exhibit A)]
139. Transcript of Proceedings of November 8, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
140. Transcript of Proceedings of November 9, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
141. Transcript of Proceedings of November 10, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
142. Transcript of Proceedings of November 30, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
143. Transcript of Proceedings of December 1, 2005, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
144. Transcript of Proceedings of February 8, 2006, in the United States Bankruptcy Court for the Northern District of Illinois before the Honorable Susan Pierson Sonderby.
145. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion for Judgment Pursuant to Fed. R. Bankr. P. 7052 and Fed R. Civ. P. 52(c). [Docket No. 29522]

146. Reorganized Debtors' Response to Claimants Philip Morris Capital Corp.'s and HNB Investment Corp.'s Motion for Judgment. [Docket No. 29540]
147. Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Rule 52(c) Response to Kmart's Motion for Judgment. [Docket No. 29523] **[NOTE:** Kmart's Motion for Judgment was made orally in Court and therefore does not appear on the Docket.]
148. Memorandum in Support of Proposed Findings of Fact and Conclusions of Law Submitted by Claimants Philip Morris Capital Corporation and HNB Investment Corp., with Exhibits A (Proposed Findings of Fact and Conclusions of Law) and B (Revenue Ruling 2004-86) thereto. [Docket No. 29525]
149. Reorganized Debtors' Memorandum in Support of Their Proposed Findings of Fact and Conclusions of Law, with Attachments A (Proposed Findings of Fact), B (Proposed Conclusions of Law) and C (November 18, 2005, transcript of proceedings in *In re UAL Corp.*, Case No. 02 B 48191, United States Bankruptcy Court for the Northern District of Illinois). [Docket No. 29520]
150. Order Allowing Claim No. 50863 and Disallowing Claim Nos. 50110, 50111, 50112 and 50113 (the "Claims Order"). [Docket No. 30689]
151. Findings of Fact and Conclusions of Law referenced in the Claims Order. [Docket No. 30688]
152. Order, to the extent it denied Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion *in Limine* to Exclude Evidence. [Docket No. 30687]
153. Order denying Claimants Philip Morris Capital Corporation and HNB Investment Corp.'s Motion for Judgment Pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(c). [Docket No. 30685]
154. Order granting the Reorganized Debtors' Motion *In Limine* to Exclude Evidence Relating to Kmart's Settlement with Verizon. [Docket No. 29352]

155. Notice of Appeal of Appellants and Claimants Philip Morris Capital Corporation and HNB Investment Corp., with Exhibits A though E (which are duplicates of Record Items 150 through 154, above). [Docket No. 30701]

Dated: March 8, 2007

PHILIP MORRIS CAPITAL CORPORATION and  
HNB INVESTMENT CORP., Appellants

By: /s/ Christopher Combest  
One of its Attorneys

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